

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

-----X  
SANTO LANZAFAME in his fiduciary capacity as :  
a Trustee of THE STONE SETTERS LOCAL 84 :  
PENSION FUND, ANNUITY FUND, VACATION :  
FUND, APPRENTICE FUND and INDUSTRY :  
PROMOTION FUND and as a Trustee of the :  
BRICKLAYERS LOCAL NO. 1 WELFARE AND :  
INSURANCE FUND and as President of the :  
BRICKLAYER AND ALLIED CRAFTWORKERS, :  
LOCAL UNION NO .1, NEW YORK, B.A.C.I.U :  
AFL-CIO, :  
: Civ. No. 07 Civ. 3351 (RWS)  
Plaintiffs, :  
v. :  
TRIBEC LTD., ADAM OTTAVINO and :  
JOHN or JANE DOE FIDUCIARY, :  
Defendants. :  
-----X

**AFFIDAVIT OF DEFENDANT ADAM OTTAVINO**  
**IN OPPOSITION TO PLAINTIFF'S MOTION TO COMPEL DISCLOSURE**

STATE OF NEW YORK)  
COUNTY OF NEW YORK)ss:

ADAM OTTAVINO, being duly sworn deposes and says:

1. I am a named defendant and the president of defendant Tribec Ltd.  
("Tribec") in this action. I make this affidavit in opposition to plaintiff's motion to  
compel disclosure made by letter to the Court dated April 1, 2008.

2. Plaintiffs claim that Tribec has not provided plaintiffs' auditors with  
documents listed in a letter to my counsel dated January 29, 2008. A copy of this letter is  
attached hereto As Exhibit A.

3. Tribec has provided all the documents in its possession that are required for plaintiffs' auditors to complete its audit. Tribec cannot produce documents that do not exist.

4. Plaintiffs' auditors have performed two audits of Tribec's books and records for the relevant period. Tribec allowed the auditors full access to its books and records at Tribec's premises and the auditors were also given full access to all the tax returns at Tribec's accountant's office.

5. Tribec has basically been out of business since the beginning of 2007 and has not employed any union labor since this time. For the period prior to this, Tribec has produced and made available all the records in its possession to the plaintiffs' auditors.

**WHEREFORE**, It is respectfully requested that plaintiffs' application to compel further disclosure be denied.

  
ADAM OTTAVINO

Sworn to before me this 8<sup>th</sup>  
day of April, 2008

  
Notary Public

Gail Bialoskurski  
Notary Public, State of New York  
No. 01014071740  
Qualified in Queens County  
Commission Expires Sept. 22, 2010

**EXHIBIT A**

VINCENT F. O'HARA  
WILLIAM P. HOLM\*  
MICHAEL L. LANDSMAN  
CAROL G. DELL

ABBEY M. GRUBER†  
MARION M. LIM  
VALERIA A. KOZHICH

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\* ALSO ADMITTED IN CT  
† ALSO ADMITTED IN NJ



January 29, 2008

**Via Facsimile and First Class Mail**

David J. Aronstam, Esq.  
192 Lexington Avenue, Suite 1202  
New York, NY 10016

Re: *Santo Lanzafame et al. v. Tribec Ltd. et al.*  
Index No. 07-CV-3351  
Our File No. 4088.014

Dear Mr. Aronstam:

In furtherance to our discussions at the January 23, 2008 Initial Pretrial Conference in the above referenced matter, plaintiffs' auditors have identified the following records as necessary to complete the audit examination of Tribec, Ltd. ("Tribec"):

- a) General ledger reports for the period 7/1/05-3/31/07;
- b) Cash disbursement ledgers for the period 7/1/05-3/31/07;
- c) NYS-45 & 941 reports for the periods ending September 30, 2005, December 31, 2005, March 31, 2006, June 30, 2006 and March 31, 2007;
- d) A complete set of certified payrolls for the audit period (7/1/05-3/31/07); and
- e) Remittance reports filed for Laborers Local 1010 during the audit period (7/1/05-3/31/07).

Please provide copies of the above referenced documents to this office by February 13, 2008 to enable plaintiffs' auditors to complete the audit examination of Tribec.

Thank you for your courtesy and cooperation in this matter.

Very truly yours,

  
Carol G. Dell

cc: Santo Lanzafame (via facsimile)  
Jeremiah Sullivan (via facsimile)  
Michael Gold, CPA (via facsimile)

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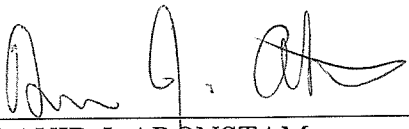
CERTIFICATE OF SERVICE

DAVID J. ARONSTAM, an attorney duly admitted to practice before the courts of New York State, affirms the following under the penalties of perjury: I am not a party to the action, am over 18 years of age and reside at New York, New York. On April 8, 2008, I served the DEFENDANTS' AFFIDAVIT IN OPPOSITION TO MOTION TO COMPEL DISCLOSURE on:

Carol Dell, Esq.  
Holm & O'Hara LLP  
Attorneys for Plaintiffs  
3 West 35<sup>th</sup> Street, 9<sup>th</sup> floor  
New York, New York 10001

by depositing a true copy thereof by first class mail enclosed in a post-paid wrapper in an official depository under the exclusive care and custody of the United States Postal Service within New York State.

Dated: New York, New York  
April 8, 2008

  
\_\_\_\_\_  
DAVID J. ARONSTAM

Civil Action No. 07 Civ. 3351 (RWS)

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF NEW YORK

\_\_\_\_\_X

SANTO LANZAFAME et al.

Plaintiffs,

-against-

TRIBEC LTD., ADDAM OTTAVINO,  
Et al.

Defendants.

\_\_\_\_\_X

**DEFENDANTS' AFFIDAVIT IN OPPOSITION  
TO MOTION TO COMPEL DISCLOSURE**

\_\_\_\_\_  
DAVID J. ARONSTAM, ESQ.

Attorney for Defendants

192 Lexington Avenue, Suite 1202  
New York, New York 10016  
(212) 949-6210  
\_\_\_\_\_